

Economic concepts of vicarious liability



a) Explain the economic logic behind laws related to the concept of vicarious liability

The simple definition of vicarious liability is where an individual or firm can be held responsible for torts committed by another, the most common case for that is of employers and employees. Vicarious liability differs from secondary liability as it doesn't deal with cases of negligence on the employers behalf, it instead relates to the scope of employment not the respondent superior. Normally when torts are committed the liability lies with the person who authorises the tort, however this is not always enough hence the introduction of vicarious liability. If companies know that they can be held vicariously liable and face the full cost for a tort then they will ensure they minimise the chances of committing a tort, this is done by better monitoring of the employees. This seems fine for large companies who have the money to monitor and the money to be able to pay any compensation. However small firms are far more disadvantaged as they don't have the resources to monitor or pay compensation, this will mean the risk of accidents is not likely to decrease. Employers will more often than not be held vicariously liable for their employee's actions. The Salmond test was developed in the 1930's to check if a tortuous act was part of an unauthorised act authorised by the employer or one the was instigate by the employee only. This was really the first definitions of vicarious liability and has been used as a test in many cases since. However over the years it has become more watered down slightly in favour of the employers. By 1969 the government had introduced a law forcing companies to take out insurance to cover cases of vicarious liability. The Employees Liability Act meant that any

company in the UK would have to insure against liability of its employees and of its own actions. This would now mean that even if the company didn't take care the insurance would be able to pay the full social cost of the tort. The act also made it compulsory to have £5 million of insurance to make sure it will cover the full liability claim for compensation. It should therefore be in the employer's interest to take more care of what they task employees to do knowing that ultimate responsibility can lie with the employer. The law up to the late 1990's stipulated that the employer could only be found vicariously liable if it was found they had authorised the employee to do something that was unauthorised. If however the employer was found not to have authorised any such behaviour the employer himself would be found liable. Since 2001 the House of Lords sees that we should focus on the link between what it is an employee is tasked to do and the nature of the tort committed. In most cases it makes good economic sense that employers should be found to be liable as well as the employees. Not just because they have a greater ability to pay compensation but because they should take more care when overlooking what their employees are tasked to do.

b) In the case of an employer/employee relationship, is there a case for extending liability beyond the employer?

To analyse this properly it is best to look at some recent case studies. One of the largest rail crashes on the British rail system was the Hatfield rail crash in 2000, it left 4 people dead and 102 injured. After the crash a long and painstaking enquiry took place to see how the crash happened and who the blame lied with. The enquiry found that a section of the track was badly damaged which led to the train derailing, the section of track was found to

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have been neglected for a period of 21 months. The court held the maintenance company (Balfour Beatty) liable and fined them £10 million pounds, a record amount for the time. The court also gave the parent company of Balfour Beatty a hefty fine, Balfour Beatty was managed by Railtrack who were handed a £3.5 million fine for breaching safety rules. The judge said it was “one of the worst examples of sustained industrial negligence in a high risk industry” the crash could have been easily averted if a safety checking plan was in place and properly followed. In this case liability had to be extended beyond the employer Balfour Beatty as Railtrack were at fault for not properly regulating the maintenance work. There was however no charges brought against the employees as they were only following the orders of the employer Balfour Beatty.

In this case Balfour Beatty should take most of the blame as they are mainly at fault for not implementing the correct maintenance procedures. However Railtrack should and rightly took some of the blame as they should have been more closely supervising the what company they controlled was doing as it was in their interests.

If a company van driver for example injures a pedestrian on a crossing who is liable? The employer can be liable for hiring a incompetent driver, but also the driver can be held liable as he was careless in his driving. So in a case like this it is right to extend liability as the company cannot be held solely liable due the driver not taking due care in his job. However it is usual that the pedestrian would only sue the company that employs the driver, this is mainly because it is harder to sue on a personal liability claim and also the companies have a greater ability to pay compensation.

c) Is there a case for criminal liability in the context of vicarious liability?

In most cases firms are vicariously liable in cases of civil liability, however they can also be prosecuted as part of criminal vicarious liability. The conventional thinking is that adding criminal liability to strict vicarious liability is a good thing, it should reduce corporate crime and also be efficient in its prevention. However more recent analysis suggest that in some cases adding vicarious liability to corporate criminal liability does not encourage corporations to be more cautious. It is widely said that trying to add criminal liability to vicariously liability is extremely complicated. Taking the case of *Ferguson vs Weaving* as an example vicarious liability was trying to be applied to a charge of aiding and abetting. Weaving was the licensee of a hotel, she was charged with aiding and abetting for allowing drinkers to consume alcohol after the hours permitted by the law. The licensee said that it wasn't her fault as she had instructed the waiters and waitresses to collect up glasses before 10pm, the time at which she was licensed to allow consumption of alcohol. The court did not sympathise with her and were only concerned with the fact that she had broken the law. Therefore ultimate responsibility lay with the licensee and she was charged with aiding and abetting unlawful drinking.

In many ways criminal liability should be extended to the vicariously liable firm as ultimately it is the firm that is responsible for its employees, obviously if the employee does some that is completely unauthorised by the firm, it should be the employee that receives any criminal charges. Vicarious criminal liability however is not always useful as explained by Kraakman firms seem to be immune to criminal sanctions. The criminal <https://assignbuster.com/economic-concepts-of-vicarious-liability/>

penalties on firms are just not large enough to deter torts. In the case of Railtrack and Balfour Beatty the fines were argued to be non efficient, the money they were fined does not do the general public any good. Money they could have spent on improving the rail service was lost through the fine, instead it could have been better to force criminal charges on the two companies and forced them to invest in the rail network.

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